

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

PERCY TWAIN BARBER AND MARIA  
BARBER,

*Plaintiffs,*

v.

S.D.B. DEVELOPMENT, L.P., STEPHEN  
D. BROWN, LAW OFFICES OF THOMAS  
J. BURBANK, AND THOMAS J.  
BURBANK,

*Defendants.*

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CIVIL ACTION NO. 1:21-CV-539-MJT-CLS

**ORDER ADOPTING  
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Plaintiffs Percy and Maria Barber, proceeding *pro se*, filed this action initially bringing suit under various federal and state claims relating to the foreclosure of their home. The Court referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this Court. On November 1, 2022, the Magistrate Judge entered a Report and Recommendation [Dkt. 52] in which she recommended denying Defendants’ Second Motion to Dismiss [Dkt. 44] and Defendants’ Motion to Reurge [Dkt. 49].

The Court received and considered the Report and Recommendation of the United States Magistrate Judge pursuant to such referral, along with the record, pleadings, and all available evidence. To date, no objections to the report have been filed.

Accordingly, the findings of fact and conclusions of law of the United States Magistrate Judge are correct, and the Report and Recommendation of the United States Magistrate Judge [Dkt. 52] is ADOPTED. It is ORDERED that:

1. Defendants’ Second Motion to Dismiss [Dkt. 44] is DENIED.
2. Defendants’ Motion to Reurge [Dkt. 49] is DENIED.

3. Plaintiffs' Motion for Leave to Amend [Dkt. 42] is DENIED as to the following claims:

- a. Violation of section 51.002 of the Texas Property Code ("Count II")
- b. Violation of Chapter 32 of the Texas Penal Code ("Count III")
- c. Violation of section 1641 of the Truth in Lending Act ("Count IV")
- d. Negligent Infliction of Emotional Distress ("Count V")

These claims ("Counts II-V"), contained within Dkt. 42, are STRICKEN. Only Plaintiffs' FDCPA claim ("Count I") remains.


4. All claims against the following Defendants are DISMISSED:

- a. S.D.B. Development, L.P.
- b. Stephen D. Brown

Only Thomas J. Burbank and the Law Offices of Thomas J. Burbank remain as Defendants.

5. The remaining Defendants are ORDERED to answer or otherwise respond to Plaintiffs' Second Amended Complaint [Dkt. 42] as to their claim under section 1692f(6) of the FDCPA ("Count I") pursuant to the Federal Rules of Civil Procedure. Defendants need not answer or respond to Plaintiffs' other claims alleged in their Second Amended Complaint ("Counts II-V") that are now stricken.

**SIGNED** this 28th day of November, 2022.

  
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Michael J. Truncala  
United States District Judge